

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 2012-s41S, BY
COLIN C. DOVER

FILMED
APR 10 1975

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter, entered on February 3, 1975, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

The Applicant's permit is granted subject to:

1. All the objector's apparent prior existing water rights and all other apparent prior existing water rights.
2. Installation of a drainage pipe of at least 12 inches in diameter in the bottom center of the dam.

Done this fifth day of March, 1975

Orin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 2012

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 2012-s41S, COLIN C. DOVER

)
) PROPOSAL FOR DECISION
)

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice a hearing was held on December 10, 1974 at Lewistown, Montana for the purpose of hearing objections to the above-named Application. The Applicant, Colin C. Dover appeared at the hearing and presented testimony. He was not represented by counsel. Mr. Vernon E. Watson and Mr. Harold L. McKinlay filed timely objections to the application. Mr. Watson was represented by counsel, Mr. William Spoja, Esq., of Lewistown, Montana. Mr. Harold McKinlay was represented by counsel, Mr. Peter Rapkoch, Esq., of Lewistown, Montana. Mr. Watson and Mr. McKinlay both appeared at the hearing and presented testimony. Mr. William Spoja requested permission to make a limited appearance on behalf of his client, Mr. Ralph Lee for the purpose of putting into the record a statement of Mr. Lee's water rights without making objection to the construction for the proposed reservoir. Mr. Spoja was allowed to make his appearance without objection by Mr. Dover.

PROPOSED FINDINGS OF FACT

1. On April 11, 1974, the applicant submitted an Application For Beneficial Water Use Permit to the Department seeking to appropriate 24 acre-feet per annum from Saager Creek, a tributary of West Buffalo Creek in Judith Basin County, Montana. The water is to be impounded in a 10 acre foot reservoir on

2012

Saager Creek at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, Township 12 N., Range 14 E., M.P.M. The water is to be used for irrigation on a total of 12 acres more or less in SWSW Section 21, Township 12 N., Range 14 E., M.P.M. from June 15 to August 15, inclusive of each year, and for a fish pond from January 1 to December 31, inclusive of each year.

2. On September 24, 1974 Vernon E. Watson filed a timely objection to the application. On September 20, 1974 Peter L. Rapkoch of Lewistown, Montana filed a timely objection to the application on behalf of his client, Harold L. McKinlay.

3. Mr. Watson testified that he has acreage in Sections 11 and 12 which are flooded by the method of high spring run-off waters flowing into his diversion box and flooding his garden and shelter belt and some pasture land. The source of water for these diversions is the waters of Saager Creek. Mr. McKinlay testified that he has filed appropriations on the waters of Saager Creek and also a new reservoir with a 1974 date of appropriation on Saager Creek which could possibly be adversely affected by the proposed diversion.

4. Mr. Lee testified that he has 3 appropriations, one in the name of M.H. McClave, one in the name of Charles Perrine and one in the name of Miller which take their waters from West Buffalo Creek below the confluence of Saager Creek with West Buffalo Creek and that these appropriations could thereby possibly be adversely affected by the proposed diversion.

5. The Applicant testified that he did not feel that the proposed point of diversion would interfere with downstream users. The Applicant also testified that he wished to irrigate only 5 or 6 acres and not 12 acres as stated in the application. The Applicant also said that he would like to have a longer period of use. He would like to use water after August 15th, the

2012

cut-off date mentioned in the application. The Applicant testified that his proposed dam meets all the specifications of the SCS.

PROPOSED CONCLUSIONS OF LAW

Mr. Vernon Watson, Mr. Harold McKinlay and Mr. Ralph Lee all have apparent prior existing water rights. The evidence did not conclusively establish that approval of this application would adversely affect objectors' prior existing water rights.


PROPOSED ORDER

The Applicant's permit be granted subject to:

1. all of the objectors' apparent prior existing water rights and all other apparent prior existing water rights; and
2. installation of a drainage pipe of at least 12" diameter in the bottom center of the dam.

NOTICE: This is a Proposed Order and will become final when accepted by the Administrator, Division of Water Resources, Department of Natural Resources and Conservation. Pursuant to Section 82-4212, R.C.M. 1947, and Rule MAC 1-1.6(2)-P6190. Written exceptions to this Proposed Order shall be filed with the Administrator within ten (10) days of service of this Proposed Order upon the parties herein. Upon receipt of any written exceptions, opportunity will be afforded to file briefs and make oral arguments before the Administrator.

Dated this 3 day of FEBRUARY, 1975.


James P. Lewis
Hearing Examiner